



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 28, 1995

Mr. John Steiner
Division Chief
Department of Law
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR95-238

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31175.

The City of Austin (the "city") received a request for "copies of the bid envelope and the bid document turned in by [Con-Real], Inc. on the Phase I remodeling to South Industrial Service Center, CIP 392 227 7951 and CIP 448 237 8951." You assert that the city may withhold the requested information based on section 552.104 of the Government Code. You also contend that certain subcontractor disclosure forms may contain information that is excepted from required public disclosure under section 552.110 of the Government Code.

Since the property rights of Con-Real Support Group, Inc., ("Con-Real") are implicated by the release of the requested information here, this office notified Con-Real of this request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Con-Real did not reply to our notification. However, you provided us with a copy of a letter from Hiram McBeth, attorney for Con-Real, in which Mr. McBeth raised section 552.104 of the Government Code and objected to the disclosure of the subcontractor disclosure forms. Mr. McBeth stated that Con-Real does not object to the disclosure of the forms at the time of the award.

Section 552.104 states that:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. Open Records Decision No. 541 (1990).

You state that "[t]he contract will not be awarded until January 19, 1995, at the earliest." If the contract has already been awarded, section 552.104 is not applicable, and the city may not withhold the requested information pursuant to section 552.104. However, if the city has not awarded the contract, the city may withhold the requested information until such time as it does so.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 31175

Enclosures: Submitted documents

cc: Mr. John M Braun
Braun & Butler Construction, Inc.
1703 Dungan Lane
Austin, Texas 78754
(w/o enclosures)

Mr. Gerald Alley
Con-Real, Inc.
297 N.W. 25th Street
Grand Prairie, Texas 75050
(w/o enclosures)

Mr. Hiram McBeth
McBeth & Kyle
P.O. Box 2691
Dallas, Texas 75221
(w/o enclosures)